

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CHARLES PRAY,

Plaintiff,

- against -

**CORRECTION OFFICER FREDERICK
BREYETTE** in his individual and official
capacity as a Correction Officer employed
by the State of New York,

Defendant.
-----X

COMPLAINT

**PLAINTIFF DEMANDS
TRIAL BY JURY**

9:20-cv-1585 (GLS/ATB)

Plaintiff, by his attorney, ANDREW F. PLASSE & ASSOCIATES, LLC, as and for his
Complaint, hereby alleges and shows to the Court the following:

1. Plaintiff Charles Pray hereby brings this action against Correction Officer Frederick Breyette in his individual and official capacity as a Correction Officer employed by the State of New York for damages arising out of unconstitutional policies and actions arising out of an alleged excessive use of force incident which occurred on July 21, 2018.

2. Plaintiff brings this action against the defendants to redress the deprivation of rights secured to him by the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C Section 1983. This court has Jurisdiction over a Federal Question. No amount in controversy is required to be plead.

3. No State Law Claims are alleged.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 1331, 1332, and 1343(a) (3) and 42 U.S.C. Section 1983.

5. Venue is proper in this District pursuant to 28 U.S.C. 1381.

6. At all times hereinafter mentioned the defendant Correction Officer Frederick Breyette was employed as New York State Correction Officer and acted under color of state law or a statute, ordinance, regulation or custom.

7. That heretofore the Plaintiff exhausted his Administrative Remedies by filing a Grievance regarding the below mentioned alleged misconduct, and exhausted his Administrative Remedies up to and including CORC. The Grievance was also referred to the Office of Special Investigations, which made a separate and different determination on the issues alleged herein.

8. Plaintiff has complied with all provisions of the PLRA prior to commencement of this suit.

STATEMENT OF FACTS

9. On July 21, 2018, plaintiff was an inmate at Clinton Correctional Main Facility, 1156 Cook Street, Dannemora, NY 12929.

10. On July 21, 2018, defendant was a New York State Correction Officer at Clinton Correctional Main Facility, 1156 Cook Street

11. On July 21, 2018 at approximately 4:45 p.m. at Clinton Correctional Facility Main, 1156 Cook Street, Dannemora, NY 12929 at the North Yard Flats, defendant Correction Officer Frederick Breyette allegedly used excessive force on the plaintiff.

12. Immediately prior to the alleged incident, Plaintiff Charles Pray was involved in a physical altercation with another inmates.

13. Correction Officer Frederick Breyette was one of several Correction Officers on duty in the North Yard during the physical altercation involving plaintiff and another inmate.

14. Correction Officer Frederick Breyette struck the plaintiff twice on the back with his baton to terminate the altercation.

15. Plaintiff ceased fighting, was in compliance with the Order to stop fighting and in the process of moving to a prone position.

16. Correction Officer Frederick Breyette used his baton a third time, and struck the plaintiff on the right side of the back of his head with his baton, using both hands to hold and strike the plaintiff. This allegedly occurred after the plaintiff had ceased the altercation and was cooperative with the Officer's Order, causing him to sustain an injury to his right parietal scalp and other severe personal injuries.

17. Plaintiff was rendered unconscious or semi-conscious, sustained a 2 inch by ¼ inch laceration to the back of his head, requiring hospitalization and staples to his head to close the wound and stop the bleeding.

18. As a result of the incident, the Plaintiff sustained severe and permanent personal injuries.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT CORRECTION OFFICER FREDERICK BREYETTE, PLAINTIFF RESTATES AND REALLEGES EACH AND EVERY ALLEGATION SET FORTH IN PARAGRAPHS MARKED AND ENUMERATED "1-18" AND FURTHER ALLEGES AS FOLLOWS:

19. Upon information and belief, the actions taken as aforesaid by Correction Officer Frederick Breyette on July 21, 2018 by assaulting and battering the plaintiff, when plaintiff was obeying his commands and force was no longer necessary and then striking him in the head using a baton with two hands which is prohibited, instead of using the baton properly, causing Charles Pray to sustain a severe head injury and other personal injuries, and was in violation of the Fourth and Eighth Amendments and a deprivation of liberty without due process of law under the Fifth and Fourteenth Amendments.

20. Upon information and belief, Correction Officer Frederick Breyette acted with actual malice toward the Plaintiff and with willful and wanton indifference and deliberate disregard for the statutory and constitutional rights of the plaintiff.

21. Solely by reason of the above, the plaintiff sustained severe personal injuries, was rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiff incurred and in the future may incur further hospital and/or medical expenses in an effort to be cured of said injuries; all to plaintiff's great damage.

22. That by virtue of the foregoing, Plaintiff has been damaged in the amount of THREE MILLION [\$3,000,000.00] DOLLARS.

I. Judgment on the First Cause of Action against defendant Correction Officer Frederick Breyette in the amount of THREE MILLION (\$3,000,000.00) DOLLARS;

II. Punitive Damages against defendant Correction Officer Frederick Breyette in the amount of THREE MILLION (\$3,000,000.00) DOLLARS;

III. Together with the costs and disbursements of this action, for reasonable attorney's fees under the applicable Federal Statutes, and for such other and further relief as to this Court seems just and proper.

DATED: December 21, 2020
Flushing, New York



ANDREW F. PLASSE & ASSOCIATES LLC
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**DEMAND FOR JURY TRIAL IS HEREBY MADE
PURSUANT TO RULE 38 OF THE FEDERAL
RULES OF CIVIL PROCEDURE**



ANDREW F. PLASSE & ASSOCIATES LLC

BY: ANDREW F. PLASSE

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